

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-7300

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TERRY LEE GREEN,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Florence. Cameron McGowan Currie, District Judge. (CR-99-558; CA-02-1988-4-22)

Submitted: December 15, 2004

Decided: January 12, 2005

Before MICHAEL and MOTZ, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Remanded by unpublished per curiam opinion.

Terry Lee Green, Appellant Pro Se. Rose Mary Parham, Assistant United States Attorney, Florence, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Terry Lee Green seeks to appeal the dismissal of his motion characterized by the district court as a successive 28 U.S.C. § 2255 (2000) motion. The district court's order was entered on February 19, 2004. However, Green did not file his notice of appeal until, at the earliest, July 28, 2004,* which is outside the sixty-day appeal period under Fed. R. App. P. 4(a)(1)(B), and beyond the thirty-day period allowed under Fed. R. App. P. 4(a)(5). See Shah v. Hutto, 722 F.2d 1167, 1168 (4th Cir. 1983) (holding that a motion to extend the time to file a notice of appeal must be filed no later than thirty days after the expiration of the original appeal period in order for a court of appeals to have jurisdiction over the appeal).

Green's notice of appeal, which alleges that he did not timely receive notice of the dismissal of his action, may be properly construed as a motion to reopen the time to note an appeal under Fed. R. App. P. 4(a)(6). United States v. Feuwer, 236 F.3d 725, 729 & n.7 (D.C. Cir. 2001). Accordingly, we remand the case to the district court in order for that court to determine whether Green can satisfy the requirements of Fed. R. App. P. 4(a)(6). Ogden v. San Juan County, 32 F.3d 452, 454 (10th Cir. 1994). We

*At the earliest, Green filed his notice of appeal on July 28, 2004, the date he states in his certificate of service that he placed it in the prison mail system. See Fed. R. App. P. 4(c)(1); Houston v. Lack, 487 U.S. 266, 276 (1988).

express no opinion as to whether Green has met the requirements of Rule 4(a)(6). The record, as supplemented, will then be returned to this court for further consideration.

REMANDED